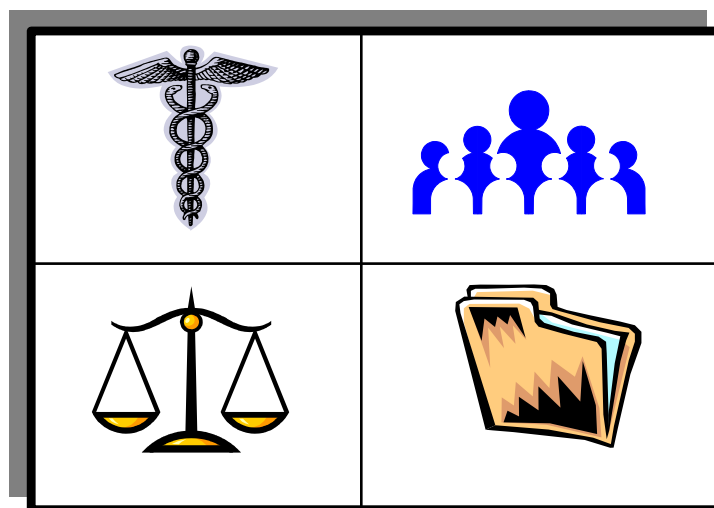


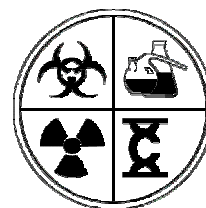
WORKERS COMPENSATION GUIDELINES FOR EMPLOYEES AND SUPERVISORS



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PREFACE

NIEHS health and safety programs emphasize the prevention of work-related illnesses and injuries. However, remedial programs are still needed to compensate employees for medical expenses and lost wages when occupational illnesses and injuries occur, despite our best efforts to prevent them. This is the primary purpose of the Federal Employee Compensation Act, which was enacted by Congress in 1908 and was one of the earliest workers' compensation laws to be implemented in the United States.

The NIEHS Health and Safety Branch is responsible for maintaining illness and injury statistics and for managing claims submitted to the U.S. Department of Labor, Office of Workers' Compensation Programs. In addition, employees and supervisors have responsibilities to obtain and provide accurate and timely information on illness or injury claim forms and on documentary statements.

This document is intended to provide employees and supervisors with a broad understanding of the Federal employee compensation program and their important role in this program. These guidelines attempt to answer some of the questions that are commonly raised concerning compensation procedures and claims processing. Worker compensation issues and administrative procedures can become confusing and complex. Contact the Health and Safety Branch for assistance and advice. Also, let us know how we can make these guidelines more responsive to your need for information on workers' compensation.

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Workers' Compensation Guidelines for Employees and Supervisors

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Workers' Compensation Guidelines for Employees and Supervisors

Introduction

The Federal Employees Compensation Act (FECA) provides monetary compensation, medical care and assistance, vocational rehabilitation, and Office of Personnel Management (OPM) retention rights to Federal employees who sustain disabling injuries, including occupational diseases, as a result of their employment with the Federal Government. The Act provides also for the payment of funeral expenses and for compensation benefits to qualified survivors of the decedent in cases of employment-related death.

The Federal Employees' Compensation Act is administered by the U.S. Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP). This agency makes all decisions concerning claims. The OWCP District Office located in Jacksonville, Florida (OWCP Region IV, FECA District 6) services the National Institute of Environmental Health Sciences (NIEHS) in Research Triangle Park, North Carolina.

The FECA Program is financed by the Employee's Compensation Fund, which consists of funds appropriated by Congress directly, or indirectly through a charge back system to the various agencies. Each year the Secretary of Labor furnishes each agency with a statement of payments made from the fund with respect to its employees. Agencies include these amounts in their budget requests. The resulting appropriated sums are deposited into the fund.

The FECA is the sole legal route by which a Federal employee (or survivors) may recover damages in consideration of an injury or death that is causally related to Federal employment. The employee may not sue for damages on his/her own.

I. Basic Compensation Benefits

Federal employees are eligible for five basic types of benefits under the provisions of the FECA program. These benefits are applicable to on-the-job injuries, and any disability or death incurred as a result of an employment-related disease or condition.

- A. **Continuation of Pay (COP)** - provided for traumatic injuries only.
- B. **Medical benefits** - hospital, doctor and drug bills.
- C. **Compensation/Disability benefits** - classified on the basis of the nature and extent of disability incurred, and defined as temporary total, permanent total, or permanent partial. Payment of compensation is based

on work related disability. Compensation for wage loss is paid at the basic rate of 66- 2/3% of regular pay for employees with no dependents (after a 3-day waiting period); 75% of regular pay for employees with a spouse and/or dependents (after a 3-day waiting period).

D. Other benefits related to disability:

1. Attendants allowance - provided if the injury is so severe that the employee is unable to care for his/her physical needs. This allowance is supplemental and is paid in addition to compensation for loss of wages. The attendants allowance must be supported by the attending physician.
2. Schedule award - paid in addition to income maintenance benefits for the permanent loss, or loss of use, of certain parts and functions of the body.
3. Vocational rehabilitation - FECA provides for the cost of vocational rehabilitation, as directed by OWCP, which is necessary to counteract the disabling compensable effects of any permanent illness or injury related to Federal employment.

E. Death benefits - includes funeral expenses, survivor's compensation, transportation of body, and administrative costs.

II. People Who Qualify for Benefits Under the Federal Employees Compensation Act

A. The following employees qualify for benefits under the FECA:

Federal Civilian Employees
Staff Fellows
Visiting Scientists
Visiting Associates
Experts
Stay-in-School Employees
IRTA Fellows
Special Volunteers
Visiting Fellows

B. The following do not qualify for benefits under the FECA:

Research Fellows
Grey Ladies
Students (Insured through their Universities)
Consultants

Commissioned Officers
Guest Worker Program
Contractor Personnel

Note: If an NIEHS employee gave a direct order to an employee not generally covered by the FECA and the employee suffered an injury or illness, circumstances might alter the rule and the OWCP might consider an employee who usually is not covered.

III. Traumatic Injuries, Occupational Diseases, Recurrences and Third Party Claims

- A. **Traumatic Injury** - defined as a wound or condition caused by external forces including physical stress and strain. The traumatic injury is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents within a single work shift. The form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*, should be given to the supervisor as soon as possible but not later than 30 days from the date of the injury.
- B. **Occupational Disease** - defined as a condition produced in the work environment over a period longer than one workday or shift. Such conditions may be caused by systemic infections or disease, continued or repeated stress or strain, exposure to toxins, poisonous or toxic vapors, dusts or fumes, noise, or other continuing exposures. The form CA-2, *Federal Employee's Notice of Occupational Disease and Claim for Compensation*, should be filed through the Health and Safety Branch (See Section IV B).
- C. **Recurrence** - defined as a spontaneous return or increase in a disability due to a previous injury or occupational disease without any other intervening cause. There is no single event, action or apparent reason for the disability except the previous injury. The NIEHS Health and Safety Branch should be notified if the employee is unable to work. The form CA-2a, *Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation* should be completed by the employee.
- D. **Third-Party** - defined as an injury caused by a person or object under circumstances which indicate that a party other than the U. S. Government has legal liability for payment of damages. The Government has a subrogation interest (the right to recover any payments it makes should the claimant collect money from another source).

Third-Party claims include claims against individuals and products. Agencies are encouraged to include any information regarding third-party

claims when submitting claim information, including the name and address of the third-party (person or manufacturer).

While a claim is pending against the third party, the OWCP provides the full range of medical and compensation benefits authorized by the FECA. In the event of recovery from the third party, the FECA specifies how money or property is to be distributed. The employee retains 20 percent of the settlement amount, after deducting any outstanding legal fees and costs. The remaining 80 percent of the settlement is used to refund OWCP for the cost of compensation benefits that were paid. Any surplus is retained by the injured employee and credited against future compensation benefits.

If third-party liability is indicated on the CA-1 form contact the NIEHS Health and Safety Branch to obtain additional information and procedures to follow.

IV. Basic Workers' Compensation Forms and Filing Procedures

Notices of injury, claims, and specified reports must be made on forms that are prescribed by the OWCP. Copies of OWCP forms are maintained by the NIEHS Health and Safety Branch. Some forms may also be obtained from the Internet at www.dol.gov/dol/esa/owcp.htm.

OWCP regulations state that notices and claims concerning traumatic injuries, occupational diseases, and compensation must be forwarded to the employer (see 20 CFR Part 10 Subpart B). Accordingly, **all forms that are filed with the OWCP must be submitted through the NIEHS Health and Safety Branch.**

Employees and supervisors should be familiar with the basic forms used for filing compensation claims. The information contained on these forms is used throughout the processing of a claim.

A. **CA-1, Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation.**

The NIEHS Workers' Compensation Coordinator should be notified within 24 hours of the injury. When the employee submits the CA-1 to his/her supervisor, the supervisor should review it, complete the section "Official Superior's Report of Traumatic Injury" and sign the form. If the accident was witnessed check to see that the witness statement has been completed. If the supervisor disputes or doubts the claimant's account of the injury, he/she should explain the disagreement on the claim form or include a memo stating the reasons for disagreement or any other evidence (photographs of accident area, etc.) which may be pertinent to the claim. The CA-1 form should be submitted to the NIEHS Health and

Safety Branch with two working days of the injury. The CA-1 must be submitted within 30 days in order to qualify for COP. If the supervisor has any questions, he/she should contact the workers' compensation coordinator for assistance.

B. CA-2, Federal Employees' Notice of Occupational Disease and Claim for Compensation.

The CA-2 should be filed within 30 days following the employee's realization that the disease or illness was caused or aggravated by his/her employment. The form must be filed within three years of the date the employee first became aware that there was a causal relationship between the disease/illness and the employment or the date of last exposure (whichever is later). The supervisor should review the CA-2, complete the section "Official Superior's Report of Occupational Disease", and sign the form. The supervisor should also submit comments on the accuracy of the employee's statement and any other facts pertinent to the claim. Additional information is required for filing occupational disease/illness claims, such as medical reports, employee statements and personnel forms. The NIEHS Workers' Compensation Coordinator will assist the employee in gathering this information.

Occupational disease/illness claims are more complicated than those for a traumatic injury due principally to the fact that the condition on which the claim is based is not always related to the employee's occupation and/or place of employment. These claims take longer to adjudicate, sometimes several months.

C. CA-7, Claim for Compensation on Account of Traumatic Injury or Occupational Disease.

This form is used to claim compensation for periods of disability not covered by COP (see Section VI). An employee becomes eligible for compensation benefits when a disability due to a work-related injury results in loss of pay for more than three calendar days. The employee should complete the CA-7 and submit the form to the Health and Safety Branch as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease.

D. CA-16, Authorization for Examination and/or Treatment.

An employee who sustains a work-related traumatic injury that requires medical examination or treatment should obtain a CA-16 from the Health and Safety Branch. This form authorizes treatment for up to 60 days from the date of issuance, unless OWCP terminates the authorization or disallows the claim.

For all claims, the employee is responsible for submitting to OWCP (or arranging for submittal) a medical report from the attending physician. For claims involving COP, the employee must ensure that medical evidence supporting the disability resulting from the traumatic injury, including a statement as to when the employee can return to work, is provided to NIEHS (i.e., supervisor and Health and Safety Branch) within 10 days after filing a claim for COP. It is also important for the employee to ensure that any pertinent work limitations specified by the treating physician are provided to NIEHS.

All OWCP records, including copies maintained by NIEHS, are considered confidential and may not be released, inspected, copied or disclosed, except as provided in the Freedom of Information Act and the Privacy Act of 1974.

V. Role of NIEHS Health Unit and Employee's Initial Choice of Physician

NIEHS has an Occupational Health Unit staffed by a full-time registered nurse and part-time physician. Many times minor injuries, such as those requiring only first aid treatment, can be handled by the Health Unit Staff, or if questionable, a decision made to suggest outside medical services. Employees are encouraged to use the NIEHS Health Unit services whenever possible for first aid treatment.

The employee has the right to select his/her own physician, provided the physician is located within a 25-mile radius of the employee's residence or duty station. The only exception to this rule is in cases where emergency treatment is indicated. After the employee has made his/her initial choice of physician, he/she may not change physicians without prior OWCP approval.

Employees should also be made aware that chiropractors are paid only for spinal manipulation (e.g., spinal subluxation) services. There must be x-rays to verify the need for these services. The costs of physical and related laboratory tests performed or ordered by a chiropractor to diagnose a subluxation are also payable.

VI. Continuation of Pay

Continuation of Pay (COP) is the continuation of an employee's regular pay by the employing agency with no charge to sick or annual leave. It is provided only in traumatic injury cases and is given for a maximum of 45 calendar days. The intent of COP is to prevent interruption of the employee's income while OWCP processes the claim. In order to qualify for COP the employee must file a written notice of the claim on form CA-1 within 30 days of the date of injury.

- A. Dates of eligibility - COP begins on the first day following the date of injury when there is immediate time-loss. Any lost work time on the date of injury is charged to administrative leave. To qualify for COP, the first time-loss must occur within 45 days from date of injury. Once COP has begun,

the employee is entitled up to a maximum of 45 calendar days. Days of COP do not need to be successive days, but they must be used within 45 days from the first working day on which the employee returns to work.

- B. Counting COP Days - calendar days are counted, not workdays. This includes weekends, holidays, and scheduled days off. The counting of COP days is often affected by the physician's written reports that are sent to the Health and Safety Branch. Questions on the counting of COP days should be referred to the NIEHS Workers' Compensation Coordinator.
- C. Charging time-loss to Employee's time and leave records - COP must be charged in one-day increments regardless of the number of hours used during the day. The time card should reflect 8 hours in the COP column.
- D. Light Duty Assignment - An employee may receive COP when assigned to light duty due to a job-related injury if the job is:
 - 1. Assigned to the employee by a personnel action,
 - 2. A bonafide position with a job description,
 - 3. Classified at lower pay level than the pay level of the job the employee held when injured, or

If the employee is assigned to a lower grade or rate of basic pay by a personnel action, or

If the schedule of work is changed which causes a loss of salary or premium pay (e.g., Sunday pay or night differential) when authorized as a part of employee's normal workweek.

An employee may not receive COP if the agency assigns that employee to limited or light duty in absence of a personnel action.

VII. Evidence Needed to Support a Claim and Agency Controversion

Under OWCP regulations, the employee is responsible for obtaining and submitting the information needed to support a claim for compensation. There are five basic requirements, or "burdens of proof", that an employee must meet before OWCP can accept a claim.

- That the claim was filed within the required time limits;
- That the employee was a U.S. government employee at the time of the injury;
- That an injury, disease, or death has in fact occurred;
- That the injury occurred while the employee was in the performance of duty; and

- That the medical condition is casually related to the injury.

Controversion (of a claim or COP) refers to the agency's opportunity to notify OWCP of disagreement with the claim being filed. In investigating the circumstances for possible controversion, evidence should be documented as thoroughly as possible. Get signed statements from the claimant, witnesses and supervisor. In controversion cases, OWCP will consider only objective evidence. A supervisor's opinion, regardless of how strong, will carry no weight in upholding a controversion.

A. There are two types of controversion:

1. **Controversion with termination of pay.** The most frequent reasons that the agency can controvert and terminate pay (COP) are:

- a. The injury was not reported on an approved form within 30 days following the injury.
- b. The injury resulted from an occupational disease. Some occupational disease claims may be filed as a traumatic injury in an attempt to receive COP, which is not available in occupational disease claims.
- c. The injury occurred off the employing agency's premises and the employee was not involved in official "off premises" duties.

2. **Controversion with continuance of pay.** Claims can be controverted for reasons other than those listed above, but the agency cannot terminate pay. To determine if COP can be terminated, contact the claims examiner for clarification of grounds on which the claim is being controverted.

B. Grounds for Controverting - Most controverted claims fall into one of two categories:

1. **Fact of injury is not established** - medical evidence does not verify that the employee actually sustained a personal injury while in the performance of duty. These claims are most often controverted because the claims documents show differing accounts of the injury. Often, the claimant's account of the injury conflicts in some important way with the signed statement of the supervisor or of witnesses, or the account given by the claimant conflicts with the physician's medical report.
2. **Causal relationship is not established** - the claimant's medical inability to perform regular duties was not caused by a work-related injury. Common types of cases that are controverted for this

reason are due to the medical report not presenting objective findings to support a disability that prevents work.

C. For clarification on any claims which you feel controversion might be indicated, contact the Health and Safety Branch (1-3383). Keep in mind that there are many circumstances in which employees are covered by the FECA and controversions will not be upheld. Below are some examples of claims that would not be controverted.

1. An employee required to use his/her own car at work and is injured while driving to or from work is covered as long as he/she has not deviated from the regularly scheduled route.
2. An employee injured during horseplay is often covered as long as the situation did not result from an argument over a personal situation.
3. An employee injured during an agency sponsored recreational activity is covered. However, activities sponsored by a volunteer employee's association (association funds do not come from the agency's budget) are not covered.
4. An employee injured on the premises while entering or leaving the tour of duty is covered. Injuries sustained on private property, such as private parking lots, are not covered.
5. Employees in travel status are covered 24 hours a day as long as they are within close proximity of their business itinerary and are engaged in reasonable activity.
6. An employee injured during lunch break on premises is covered.
7. An employee who suffers a self-originated fall (such as fainting) from a personal, non-occupational condition is covered for those injuries that result from the fall but not for injuries resulting from the employee's personal condition.

Example: An employee faints from a seizure striking her head against a chair and suffers a concussion. Those injuries to the head would be covered. However, if the employee fainted and fell to the floor, striking her head on the floor and suffered a concussion she would not be covered because there was no intervening object.

8. An employee suffers an unexplained fall that did not result from an underlying disease or idiopathic condition. FECA would cover injuries that occurred.

9. An employee injured during an assault related to the employment, not to a situation in the employee's personal life would be covered.
10. An intoxicated employee is injured but intoxication is not shown to be the direct cause of the injury. The employee is covered.
11. A job related injury aggravates an employee's pre-existing condition. Only the condition resulting from the injury is covered.

VIII. Light Duty

A "light" duty program accommodates injured employees who are temporarily unable to perform their regular duties. There are many advantages to providing light duty for injured employees. Remaining active usually aids the recuperation period, employees retain the discipline of going to work every day, the employee is contributing to the organization and earning his/her pay, and employees seem to return to regular duties sooner, rather than continuing to do lesser skilled "light" duties.

It is important that the supervisor not assign any duties to the injured employee that are not clearly within the work limitations imposed by the treating physician. Any duties that would slow down the recuperation period or risk re-injury would defeat the purpose of the light duty program.

An effective light duty program can be provided if these points are followed:

1. The supervisor should monitor current medical information on a continuous basis in order to learn when the claimant's work limitations change.
2. If there are any doubts about whether a light duty assignment is within the employee's work restrictions, the supervisor should have the treating physician review the job's maximum physical requirements to insure that they fall within the employee's limitations.
3. Match the light duty job as closely as possible to the regular job.
4. Keep the same work schedule (same days and hours) as the regular job.
5. If possible, keep the same work environment as the regular job.
6. The light duty job should be similar in terms of pay.
7. The job should have a specific time set at which it automatically ends (3 months, 6 months, etc). At this time the job can be re-appraised and the

decision made to return the employee to regular duty or permanently assign to another job.

IX. Rights and Penalties

An employee cannot be required to enter into any agreement to waive his or her right to claim compensation under the FECA. No waiver of compensation rights will be considered valid.

Certain penalties for falsification of reports are provided. Employees who knowingly file fraudulent claims can be punished by a fine of not more than \$10,000 or by imprisonment up to five years, or both.

A supervisor may not refuse to accept a claim or instruct an employee not to file a claim. An officer or employee of the U. S. Government responsible for making reports, such as an "official superior", who fails, neglects, or refuses to make a report of injury or files a false report can be fined not more than \$500 or imprisoned not more than one year, or both.

A partially disabled employee who refuses to accept suitable work is not entitled to any compensation during the period of refusal.

References

20 CFR Part 10. Claims for Compensation Under the Federal Employees' Compensation Act, as Amended.

Advanced Course for Federal Employing Agency Compensation Specialists, U. S. Department of Labor, Employment Standards Administration, Federal Employees' Compensation Program, 1986.

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